THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6216 of 2005

% 29.11.2005

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Between:

Gugulod Ravoji S/o.Matru

…Petitioner

and

The Assistant Provident Fund Commissioner,

A.P.Finance Corporation Building,

Bala Samudram, Hanmaonda & another

…Respondents

! COUNSEL FOR THE PETITIOENR: Mr.P.Anil Kumar Reddy

^ COUNSEL FOR THE RESPONDENT No.1: Mr.R.N.Reddy

COUNSEL FOR THE RESPONDENT No.2: Mr.V.Hari Haran

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> Head Note:

? CITATIONS:

1. 1981(I) ALT 393

2. 2005-III-LLJ 194

3. 1996(1) LLJ 453

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O R D E R:

1. The petitioner was employed as Mazdoor on 1.4.1975, by the second respondent. 5 years thereafter, he was promoted as a Hoist Helper, and thereafter, as Bunker Helper. By November 2003, he was working as Charging Helper. Through proceedings dated 25.11.2003, the petitioner was informed that he attains the age of superannuation of 58 years on 25.11.2004, and accordingly, he was retired from service on 25.11.2004. The petitioner states that he objected to the said course of action, and made a representation, disputing the version of the respondent. It is alleged that the elder brother of the petitioner is employed in the second respondent itself and that he is due to retire on 28.1.2006, on attaining the age of superannuation.

2. The petitioner was retired from service, with effect from 25.11.2004. He submitted his claim to the first respondent, for payment of the Provident Fund that remained to his credit. Vide his reply dated 12.1.2005, the first respondent returned the claim of the petitioner, stating that according to the information furnished to them in Form No.16-D by the second respondent, the date of birth of the petitioner is 1.1.1958, and since he is yet to attain the age of superannuation, he must submit the claim in Form No.10-C, and not in Form No.10-D. Petitioner states that he came to know about the exact date of birth entry in the official records, only through the proceedings dated 12.1.2005, issued by the first respondent, and in that view of the matter, he is entitled to remain in service, till he attains the age of 58 years, treating his date of birth as 1.1.1958.

3 . First respondent filed a counter affidavit stating that the second respondent submitted the particulars of date of birth of the petitioner in Form No.8, as 1.1.1958, and as such, the petitioner cannot claim the Provident Fund, by submitting Form Nos.10-D and 19. It is stated that the petitioner has to be treated, as having left the

service before the age of superannuation, and even such a claim can be entertained, if only he attains the age of 50 years, i.e. after 1.1.2008, and not earlier thereto. It is pleaded that an application for this purpose, is to be in Form No.10-C.

4. The claim of the petitioner is resisted by the second respondent. In its counter affidavit, the second respondent raised an objection, as to the very maintainability of the writ petition, stating that it is a private limited company, possessing no attributes of State. It is urged that the date of birth of the petitioner was entered at the time of joining the service on the basis of request made by him. It is pleaded that in pursuance of an agreement reached between the management and the trade unions, a detailed medical examination for the exclusive purpose of assessment of the age of such workers was undertaken in the year 1998. The petitioner is said to have undergone such a medical examination, and that he was retired on the basis of the age, so determined.

5. Sri P.Anil Kumar Reddy, learned counsel for the petitioner, submits that the present writ petition, which is filed challenging the denial of Provident Fund and other benefits, under the Provident Fund and Miscellaneous Act, for short “the Act”, is maintainable, since the second respondent violated the provisions of the Act and the Rules made thereunder. He contends that the petitioner was never informed of the date of birth, ever since he joined the service, and that the step taken in the year 1998, was only in relation to those cases, where the employees disputed the correctness of the date of birth, that is entered in the records. He points out that since the petitioner was not intimated the date of birth, the question of his disputing the same does not arise, and taking the advantage of the illiteracy of the petitioner, the second respondent subjected the petitioner to the so-called medical examination, without informing him, of the purpose, thereof. He contends that whatever may have been the circumstances, under which the medical examination was conducted, once the date of birth communicated to the second respondent, as part of the obligation under the Act, remains intact, the second respondent cannot ignore the same, according to their *Ipse dixit.*

6. Sri R.N.Reddy, learned Standing Counsel for the first respondent, submits that the

records of his client disclose that the second respondent furnished the date of birth of the petitioner as 1.1.1958, and therefore, it cannot be altered.

7. Sri V.Hari Haran, learned counsel for the second respondent, submits that the writ petition is not maintainable in law, since it is filed for the relief against a private limited company. He further contends that since the petitioner did not furnish any proof of his date of birth, ever since he joined the service, he was subjected to medical examination, in accordance with the agreement arrived at between the second respondent and its workmen. He further contends that once the petitioner had been retired from service, the question of his being taken back does not arise, and that he has to work out his remedies against the first respondent for payment of Provident Fund.

8. A serious objection is raised by the second respondent, as to the maintainability of the writ petition. It is true that the second respondent is a private limited company. In the ordinary course of things, the writ petition under Article 226 of the Constitution of India cannot be maintained against it. Where, however, an individual complains of infraction of statutory provisions, resulting in detriment to him and the concerned enactment provides for protection of rights by a statutory agency, the writ petition is held to be maintainable. Reference in this context may be made to the judgment of this Court in

T.GATTAIAH v. THE COMMISSIONER OF LABOUR, HYDERABAD

9. The learned counsel for the second respondent relied upon a judgment of the Supreme Court in ***BINNY LTD. v. V.SADASIVAN***. In that case, the context was substantially different. The employees of a private company filed the writ petition, under Article 226 of the Constitution of India, for a declaration that the clause 8 of the contract of appointment, on the basis of which their services have been terminated, was void under Section 23 of the Indian Contract Act. No infraction of any statute, governing the service conditions of the employees, was complained of. Therefore, the ratio laid down in the said judgment does not apply to the facts of the present case.

10. The date of birth of an employee of even a private agency pure and simple, which is governed by the provisions of the Act, becomes significant. It constitutes the sole basis for determination of age of retirement. The Act and the subordinate legislations made there under, mandate that an employee, who is covered by the Fund, can claim the payment of the Fund, only on attaining the age of superannuation, and in case, such an employee retires, before attaining such age, he can make claim for payment of the amount that accrues to his benefit, only after he crosses the age of 50 years. These provisions are made with an avowed object of implementing the provisions of the Act, and to protect the interests of the employees. Any action, which results in denial of benefit under the Act, can constitute the subject matter of a writ petition. In such cases, the adjudication would be pointed not towards the examination of the conduct of private agency, within the realm of its freedom, but would be in relation to its obligations under the relevant statute.

11. The facts of this case reveal that, on the one hand, the second respondent retired the petitioner from service, with effect from 25.11.2004 by stating that he attained the age of 58 years, and on the other hand, it reported an altogether different date of birth, to the second respondent. This inconsistent act, on the part of the second respondent, has resulted in denial of the statutory benefits to the petitioner. This Court finds that the objection as to the maintainability of the writ petition does not deserve acceptance.

12. Coming to the merits of the matter, it is not in dispute that the petitioner was an illiterate, when he joined the service, and there did not exist any proof of his date of birth. On its own rough assessment, the second respondent entered the date of birth of the petitioner. It did not inform the petitioner, as to what exactly was the date of birth, entered by them, in the relevant service records. To a pointed question of this Court, the learned counsel for the second respondent stated that no service register as such, was maintained for the petitioner.

13. The Act obligates an establishment, which employs more than 20 persons, to get itself registered and to make contribution to the Provident Fund. The second

respondent was registered with the first respondent, long back, and has been making the contributions regularly, for the persons employed by it.

14. The particulars of individual employees, covered by the Provident Fund, are required to be submitted by the concerned employers, in prescribed form. The first respondent categorically stated that the second respondent furnished the date of birth of the petitioner in the relevant form, as 1.1.1958, obviously soon after the petitioner joined the service. That date remains intact, even as of now. If the date of birth of the petitioner was changed, on account of any exercise undertaken by the second respondent, it was obligatory on the part of the latter, to have informed the same in the prescribed manner, to the first respondent. Such a step was not taken. Therefore, the date of birth of the petitioner continues to be 1.1.1958. Here it is to be noticed that the petitioner has virtually no role to play in the matter of intimation of his date of birth to the first respondent. It is purely a matter between the respondents 1 and 2.

15. Heavy reliance is placed upon the so-called exercise undertaken by the second respondent in the year 1998, in the context of verification of date of birth. The basis for such an exercise is the agreement between the second respondent and its workmen. The minutes of the meeting held on 10.3.1998, in the context of assessment of ages, reads as under:

> "**Age Assessment:**
>
> Chief General Manager and Vice President-Admn. Informed that in the last meeting they explained that around 100 workmen have failed to submit correct age proof certificates at the time of their joining the Company. The point was discussed at length. After examining the issue in all aspects, the Management has proposed an alternative. The workmen has to give an undertaking stating that they have no objection about their age which was originally declared by them and as recorded in their personal files or otherwise if they are not agreeing the age, they will be referred to the Government Medical Board and they will have to abide by the decision given by the Forensic Expert.

> After prolonged discussions the workmen representatives agreed for the proposal made by the Management and requested the Management to put the notice after identifying the persons who are not having age proof certificates in their records."

A perusal of the same discloses that the workmen were required to give an undertaking, to the effect that they have no objection about their age, which was originally declared by them, and as recorded in their personal files, and if they do not agree for the same, they would be referred to Government Medical Board, for assessment of their age. Not a word is stated in the counter affidavit, as to whether the petitioner was informed of his date of birth, at all. The question of petitioner being subjected to medical examination would have arisen, if only he was furnished the date of birth, as entered in the records; and he disputed the same. Had the second respondent informed the petitioner that his date of birth is 1.1.1958 and that they intend to alter the same, the question of the petitioner disputing the same would not have arisen.

16. Further, along with the counter affidavit, the respondents have enclosed the copy of the declaration form, said to have been obtained at the time of appointing the petitioner in the year 1975. It contains the thumb impression of the petitioner. Against Column No.4, relating to date of birth and age, there is an alteration. The words " as on 1.4.1974" were added at a later date. The original of the same, which was made available by the learned counsel for the second respondent, was perused. The number "2" before the number "8" in the figure "28", representing age, appears to have been altered.

17. However, all this controversy pales into insignificance, once it has emerged that the second respondent itself furnished the date of birth of the petitioner, as 1.1.1958, to the first respondent, as part of its statutory obligation, and that remained unaltered, even as of now. Unless and until that is changed, or any corresponding entry is made in the service records, the second respondent was not justified in retiring the petitioner, before he attains the age of superannuation. The petitioner is denied of his right to remain in service, till he attains the age of superannuation, on the one hand, and the right to receive the Provident Fund, on the other. The discrepancy in

the age, pleaded by the second respondent, and the one existing in the records of the first respondent, is so vast, that it has not only resulted in delayed payment of the Provident Fund to the petitioner, but also in denial of substantial portion thereof.

18. One important fact, which needs to be taken note of, is that the petitioner specifically pleaded that his elder brother is employed in the second respondent factory, and the notified date of his retirement, on attaining the age of superannuation, is 28.1.2006. Whatever be the accuracy of the date of birth of the petitioner, who is an illiterate, he cannot be retired much before his elder brother is retired from service, from the same organization.

19. Sri Hari Haran, learned counsel for the second respondent submits that the age of an employee, determined by a Medical Board, cannot be interfered by an Industrial Tribunal, much less the High Court. In support of this contention, he relied upon the judgment of the Supreme Court in ***BHARATH COKING COAL LTD. V. PRESIDING OFFICER AND ANOTHER***. The order passed by the Supreme Court in that case discloses that the sole basis for the assessment of the age of the employee was the examination by a Medical Board, and the employee was retired two years after such assessment, without any demur. It is not evident from that case that there existed a recorded date of birth, and that there was a downward assessment on the medical examination, as in the instant case.

20. The occasion to subject an employee for medical examination, in the matter of assessment of age, arises, when he disputes the correctness of the age and pleads that he is entitled to remain in service for some more time. These instances arise mostly in the case of illiterate persons. One hardly finds an occasion to subject an employee, to undertake the downward revision or correction of date of birth, resulting in curtailment of length of service. It has been observed in the preceding paragraphs that after the petitioner was taken into service in the year 1975, the second respondent communicated the date of birth of the petitioner to the first respondent, as 1.1.1958. This was not communicated to the petitioner, at least, when steps were taken, in pursuance of the agreement between the management and the workmen, in the year 1998. The instances, where the age of an employee is assessed to be

less than the one arrived at, on the basis of the date of birth entered in all service records, are almost unknown.

21. For the foregoing reasons, this Court finds that the second respondent retired the petitioner from service, before he attained the age of superannuation of 58 years. Therefore, the writ petition is allowed as prayed for, and it is declared that the petitioner shall be entitled to remain in service of the second respondent, till he attains the age of superannuation, on the basis of the date of birth, as it exists in the records of the first respondent, i.e. 1.1.1958. There shall be no order as to costs.

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(**L.NARASIMHA REDDY, J)**

Dt. 29th November 2005

L.R.copies be marked.

(B/o)

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